

## Administrative Regulation 6:2

# Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, Domestic Violence and Sexual Exploitation

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## I. Introduction

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This *Administrative Regulation* establishes the University's policies and procedures for addressing and resolving allegations of sexual assault, stalking, dating violence, domestic violence, sexual exploitation, complicity in the commission of any act prohibited by this regulation, and retaliation against a person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this regulations. The University's Title IX Coordinator and the Office of Institutional Equity and Equal Opportunity (IEEO) administer this regulation.

The Title IX Coordinator and the IEEO administer two (2) separate policies that address sexual misconduct and other forms of discrimination and harassment:

- *Administrative Regulation 6:1, "Policy on Discrimination and Harassment"*
- *Administrative Regulation 6:2, "Regulation on Sexual Assault, Stalking, Dating Violence, Domestic Violence and Sexual Exploitation"*

The University's Title IX Coordinator has discretion to determine which policy applies to reported behavior. Questions about which policy applies in a specific instance should be directed to the University's Title IX Coordinator at (859) 257-8927.

## II. Policy

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The University of Kentucky is committed to providing a safe learning, living, and working environment for all members of the University community. Consistent with this commitment, the University prohibits sexual assault, stalking, domestic violence, dating violence, sexual exploitation, complicity in the commission of any act prohibited by this regulation, and retaliation against any person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this regulations (collectively, "prohibited conduct"). These forms of prohibited conduct are unlawful, undermine the character and purpose of the University, and will not be tolerated.

Employees or students who violate this regulation may face disciplinary action up to and including termination or expulsion. The University will take prompt and equitable action to prevent prohibited conduct, discipline anyone who violates this policy, stop further prohibited behavior, and remedy the effect of any such conduct. The University conducts ongoing prevention, awareness, and training programs for Employees and Students to achieve the goals of this regulation.

Every member of the University community is responsible for fostering an environment free from prohibited conduct. All members of the University community are encouraged to take reasonable and prudent actions to prevent or stop an act of prohibited conduct. The University will support and assist community members who take such actions.

## III. Scope

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- A. This *Administrative Regulation* applies to all members of the University community, including faculty, staff, students, volunteers, and registered student organizations.
- B. This regulation applies to any acts of sexual assault, stalking, dating or domestic violence that occur:
  - 1. On campus or any other University owned, leased, controlled, or operated location;
  - 2. During any activity off University premises if the activity is authorized, initiated, sponsored, aided, or supervised by the University or a registered student organization; or
- C. If the conduct occurs outside the context of University employment or a University education program or sponsored activity, this administrative regulation applies whenever the conduct has continuing adverse effects on or creates a hostile environment for students, employees or third parties while on property owned, leased, or controlled by the University, or in any University employment or education program or activity.
- D. University faculty, staff, and students may utilize services of the University's Violence Intervention and Prevention Center (VIP) whether or not the accused is another student or employee.

## IV. Definitions

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The following definitions are for purposes of this regulation and are not intended to replace or summarize the Kentucky Revised Statutes.

A. Affirmative Consent

*Affirmative consent* means a voluntary expression of willingness, permission, or agreement to engage in specific sexual activity throughout a sexual encounter. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other to engage in the sexual activity. Consent cannot be inferred from the absence of a "no"; consent, verbal or otherwise, must be obtained.

Consent cannot be granted by an individual who:

1. Is incapacitated—as defined by Kentucky law—by any drug or intoxicant;
2. Has been compelled by force or threat of force;
3. Is unaware that the act is being committed;
4. Is impaired because of a mental or physical condition;
5. Is coerced by supervisory or disciplinary authority; or
6. Is less than the statutory age of consent.

B. Attorney

An Attorney is an individual who is licensed to practice law in the courts of the Commonwealth of Kentucky. An attorney representing a party to a formal hearing may actively participate in any formal hearing that may occur as a result of an investigation pursuant to AR 6:2. An attorney may attend an investigative meeting, but may not interfere with the investigative meeting.

C. Campus Security Authority

A *Campus Security Authority* (CSA) is broadly defined as an individual having responsibility for campus security or an official having significant responsibility for student and campus activities. For a specific listing of individuals designated as campus security authorities, see *Administrative Regulation 6:7.III.E, Policy on Disclosure of Campus Security and Crime Statistics*.

D. Complaining Witness

*Complaining Witness* means any person alleging a violation(s) of AR 6:2. The University may initiate proceedings without a formal complaint from the victim of an alleged violation of this regulation. Although the participation of the Complaining Witness likely will be a critical part of any hearing, the Complaining Witness is not a party to a formal hearing that may occur as a result of an investigation pursuant to AR 6:2.

E. Complicity

*Complicity* means any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct by another person.

F. Dating Violence

*Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

1. The existence of such a relationship will be based on the reporting party's statement and

with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

2. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

#### G. Domestic Violence

*Domestic violence* means violence committed by:

1. A person who is a current or former spouse or intimate partner with the victim;
2. A person with whom the victim shares a child in common;
3. A person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
4. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws where the violence occurred.

#### H. Employee

*Employee* means a faculty employee or staff employee, regardless of employee type (i.e., regular or temporary), as defined in *Human Resources Policy and Procedure #4.0: Employee Status*.

#### I. Force or Coercion

*Force or coercion* means: (a) threats of serious physical, emotional, or psychological harm to or physical restraint against any person, or (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person.

#### J. Hearing Officer

*Hearing Officer* means an attorney who is appointed by the President to preside over a hearing to resolve alleged violations of AR 6:2. The Hearing Officer is responsible for maintaining order and determining the sequence of events during a hearing. The Hearing Officer may direct any person who fails to comply with procedures during the hearing, disrupts, or obstructs the hearing to leave the hearing. All questions of law, whether substantive, evidentiary, or procedural, will be addressed to and ruled upon by the Hearing Officer

#### K. Incapacitation

*Incapacitation* means a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). This regulation also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the consumption of alcohol or other incapacitating drugs. A person can be intoxicated without being incapacitated.

#### L. Physical assault

*Physical assault* means threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical assault will be addressed under

this policy if it involves sexual or gender-based harassment, intimate partner violence, or is part of a course of conduct under the stalking definition.

#### M. Preponderance of the Evidence Standard

*Preponderance of the Evidence* means superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

#### N. Registered Student Organization

*Registered Student Organization (RSO)* means a group of identifiable persons who have complied with the requirements for registration as determined by the Office of Student Involvement in accordance with *AR 4:1, Registration of Student Organizations*, and includes groups that are seeking, but have not yet been granted registered status.

#### O. Respondent

A *respondent* means anyone against whom a complaint or allegation of prohibited conduct is made. A *respondent* is a party to any formal hearing that occurs because of an investigation pursuant to this regulation.

#### P. Responsible Employee

*Responsible employee* means any University employee who:

1. Has the authority to take action to redress prohibited conduct;
2. Who has been given the duty of reporting incidents of prohibited conduct or any other misconduct to the Title IX coordinator or designee; or
3. Who an individual reasonably believes has this authority or duty.

#### Q. Retaliation

*Retaliation* means any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing, or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of prohibited conduct. Retaliatory behavior is not limited to behavior by the accused individual, and covers behavior by his or her associates, as well as third parties. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct. Retaliation should be reported to the Title IX Coordinator.

#### R. Sanction

*Sanction* means any educational or disciplinary measure provided to encourage self-reflection regarding the respondent’s policy violation, to stop further inappropriate behavior, and to deter any subsequent violations. Sanctions should be appropriately connected to the violation.

## S. Sexual Assault

1. *Sexual assault* means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - (a) Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
  - (b) Fondling is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
  - (c) Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - (d) Statutory Rape is defined as sexual intercourse with a person who is under the statutory age of consent.
2. Sexual assault also includes all sex offenses as stated in Kentucky Revised Statutes 510.010 through 510.140.

## T. Sexual Exploitation

*Sexual exploitation* means taking non-consensual or abusive sexual advantage of another, and includes situations in which the conduct does not fall within the definitions of Sexual Harassment or Sexual Assault.

Examples of Sexual Exploitation include, but are not limited to the following:

- Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give affirmative consent to sexual activity;
- Allowing third parties to observe private sexual activity from a hidden location (e.g., a closet) or through electronic means (e.g., via Skype or live streaming of images);
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
- Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Prostituting another person; and
- Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

## U. Sexual Misconduct Hearing Panel Pool

*Sexual Misconduct Hearing Panel Pool* means those presidential appointees (two (2) faculty members from each College and an equal number of staff members from the University as a whole) who will serve as members of the Sexual Misconduct Hearing Panel Pool. Members must receive annual training by the Title IX Coordinator on issues related to sexual assault, domestic violence, dating violence, and stalking. Students are not permitted to serve.

## V. Sexual Misconduct Hearing Panel (Hearing Panel)

*Sexual Misconduct Hearing Panel (Hearing Panel)* means a 3-person hearing panel selected by the Hearing Officer from the Sexual Misconduct Hearing Panel Pool to resolve alleged violations of AR 6:2.

## W. Sexual Misconduct Appeals Board (SMAB)

*Sexual Misconduct Appeals Board (SMAB)* means those presidential appointees (one faculty member from each college and an equal number of staff members from the University as a whole) who will serve as the SMAB. In addition, the President will appoint one faculty member, who has a law degree, to serve as Chair of the SMAB. The SMAB will consider appeals of a Hearing Panel's determination as to whether a student, student organization, or employee has violated AR 6:2 or of recommended sanctions. Because the Code of Student Conduct explicitly provides that the AR 6:2 procedures--not the Code's procedures--apply when a student is accused of violations AR 6:2, the SMAB hears all appeals involving students who have been found responsible for violations of AR 6:2.

## X. Stalking

*Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

- (a) Course of conduct means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- (b) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- (c) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Stalking includes "*cyber-stalking*," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact, to engage in activities delineated in this definition.

Examples of Stalking include, but are not limited to:

- Following a person;
- Appearing at their home, place of business, or classrooms;
- Making harassing phone calls;
- Mailing written messages, sending or posting electronic messages;
- Leaving messages or objects at their home, place of business, vehicle, or classroom; and
- Vandalizing personal property.

## Y. Student

*Student* means any person who is enrolled in courses at UK. Student status continues whether or not UK's academic programs are in session. Student status includes those taking courses for credit or non-credit at UK, either full-time or part-time, while pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating this Policy, who graduated after allegedly

violating this Policy or who are living in the residence halls, although not enrolled at UK, are also considered Students.

## Z. Support Person

*Support person* means an advocate or other individual who may attend an investigative meeting or formal hearing to provide advice, support, or guidance to either the Respondent or the Complaining Witness. A Support Person may not be a witness at the hearing. If the Support Person is not an attorney, the Support Person may not participate in the hearing.

## AA. Title IX Coordinator

The *Title IX Coordinator* is the University official responsible for investigating complaints of prohibited conduct, resolving potential violations informally, facilitating the hearing process, and recommending appropriate sanctions when violations are confirmed.

## BB. University Counsel

*University Counsel* means the attorney(s) designated by the University to prosecute the alleged violation of this policy to the Hearing Panel on behalf of the University. The University is a party to a formal hearing occurring pursuant to this regulation.

## CC. University Official

*University official* means any person employed or otherwise authorized by the University to perform assigned administrative or professional responsibilities.

## DD. University Premises

*University premises* means all property, buildings, and facilities owned, leased, used, or controlled by the University (including adjacent streets and sidewalks).

# V. Prohibited Acts

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A. Every member of the University community is prohibited from:

1. Engaging in sexual assault, stalking, dating violence, domestic violence, sexual exploitation, and complicity in the commission of any act prohibited by this regulation;
2. Retaliating in any manner against an individual who makes a complaint or participates in the investigation of a complaint of sexual assault, stalking, dating violence, domestic violence, or sexual exploitation;
3. Interfering with procedures to investigate or redress a complaint of sexual assault, stalking, dating violence, domestic violence, or sexual exploitation; and
4. Making an intentionally false accusation of prohibited conduct through the University's procedures.

B. Any member of the University community who engages in one of these prohibited acts against any other member of the University community may be subject to corrective action and appropriate sanctions.



## VI. Reporting Complaints

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- A. Any University employee who witnesses or is made aware of an incident of prohibited conduct must report it to the University of Kentucky Police (UKPD) or the Title IX Coordinator as soon as possible.
- B. The University strongly encourages prompt reporting by non-employees, including victims, witnesses, and those who are made aware of incidents of prohibited conduct. Reports may be made to the UKPD, police in the location where the violence occurred, the University Violence Intervention and Prevention Center, the Dean of Students Office, the Title IX Coordinator, a Campus Security Authority, or to any University official. An incident may be reported without filing a written complaint.
- C. Individuals designated as Campus Security Authorities are required by law to report certain crimes, including alleged sex offenses, stalking, and relationship violence, to the UKPD or Division of Crisis Management and Preparedness. These reports are made for statistical purposes, without the inclusion of identifying information of the parties. For reporting responsibilities of individuals designated as Campus Security Authorities, see *Administrative Regulation 6:7, Policy on Disclosure of Campus Security and Crime Statistics*.
- D. Confidential reporting is allowed to the University Violence Intervention and Prevention Center and the University Counseling Center or Health Services when receiving counseling or medical services. Anonymous reports may also be made to the UKPD; however, because police reports are public records under state law, UKPD cannot hold reports of prohibited conduct in confidence.
- E. The University provides information on pursuing criminal or other legal action, health care, counseling, and other support services available to students, faculty, staff, and visitors who have made a complaint of prohibited conduct.
- F. The University resolves complaints of prohibited conduct within a period that is reasonable given the nature of the complaint. The University will keep the Complaining Witness and Respondent informed of the progress of the proceedings. The University encourages individuals who make a complaint of prohibited conduct, regardless of where the complaint is made, to also contact the University Violence Intervention and Prevention Center (<http://www.uky.edu/StudentAffairs/VIPCenter/>) for assistance in accessing and navigating services, resources, and referrals both on and off campus.
- G. Individuals who experience sexual assault, dating violence, or domestic violence are strongly encouraged to seek medical attention and be examined for physical injury, the presence of sexually transmitted diseases, or pregnancy as a result of rape.

**NOTE: An individual who is considering making a criminal complaint or taking other legal action should seek medical care as soon as possible after the assault. It is important for the individual to not bathe, douche, or change clothing before the medical examination in order to avoid inadvertently removing important evidence. The kind of evidence that supports a legal case against an accused should be collected as soon as possible, at maximum within ninety-six (96) hours of an assault.**

### Important University Contact Numbers:

UK Police .....	911 from a UK phone; or #UKPD from your cell phone
Violence Intervention and Prevention Center.....	(859) 257-2884; or (859) 257-3564
Office of the Dean of Students.....	(859) 257-3754
Counseling and Testing.....	(859) 257-8701
University Health Services.....	(859) 323-5823
UK HealthCare.....	(859) 257-1000

The University's Title IX Coordinator can be contacted during office hours as follows:

Martha Alexander, Title IX Coordinator  
13 Main Building  
859-257-8927  
[Martha.alexander@uky.edu](mailto:Martha.alexander@uky.edu)

## VII. Rights of the Complaining Witness and the Respondent

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- A. The Complaining Witness has the right to choose whether to file a complaint with the University. However, when the University is made aware of an allegation of prohibited conduct, it must investigate and take appropriate action.
- B. In addition to pursuing administrative penalties and remedies, the Complaining Witness maintains the right to pursue criminal or other legal action.
- C. Both the Complaining Witness and the Respondent have the right:
  - 1. To be treated with respect by University officials;
  - 2. To take advantage of campus support resources;
  - 3. To experience a safe living, educational, and work environment;
  - 4. To have an attorney present during any investigation and represent them at any subsequent hearing;
  - 5. To have up to two (2) support persons, including attorneys, present during meetings and hearings;
  - 6. To refuse to have an allegation resolved through conflict resolution procedures;
  - 7. To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
  - 8. To be free from retaliation for reporting violations of this policy or cooperating with an investigation;
  - 9. To have complaints heard in accord with University procedures;
  - 10. To be informed in writing of the outcome/resolution of the complaint, any sanctions where permissible, and the rationale for the outcome where permissible;
  - 11. To have minimal interaction or contact with the responding party or complaining party; and
  - 12. To request interim remedies from the University to ensure minimal interaction or contact with the responding or complaining party.

## VIII. Corrective Actions and Disciplinary Procedures

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- A. For students, faculty, and staff, the University utilizes the procedures outlined in the Appendix to address and resolve allegations of prohibited conduct.
- B. The recommended range of sanctions for students are in accordance with the Appendix and include disciplinary probation, counseling assessment, social restrictions, social suspension, suspension, dismissal, revocation of admission, or revocation of degree. A recommended sanction of revocation of a

degree must be referred to the Board of Trustees for final action. (See KRS 164.240) Additional sanctions also may be imposed when appropriate. Both the Complaining Witness and the Respondent will be informed of the outcome of the corrective action or disciplinary process.

- C. The recommended range of sanctions for faculty and staff are in accordance with the Appendix and include suspension, counseling, or termination of employment. Additional sanctions also may be imposed when appropriate. Both the Complaining Witness and the Respondent will be informed of the outcome of the corrective action or disciplinary process.
- D. If a Respondent is found responsible, the Respondent has the right to appeal the decision. Neither the University nor the Complaining Witness may appeal a finding of not responsible.

## IX. Education

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Regular and ongoing education regarding the issues addressed in this policy is available for all members of the University community. The VIP Center offers both online and interactive training sessions for students and conducts Green Dot bystander intervention training for faculty and staff. Training on Discrimination and Harassment, including Title IX, is offered by the Title IX Coordinator, or designee, on a regular basis for new employees, in the Supervision curriculum, and for employees and any units upon request.

## References and Related Materials

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TITLE IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 - 1688

Department of Education, Title IX regulations, 34 C.F.R. § 106.1, et seq.

Higher Education Act of 1965, 485(f) (20 U.S.C. 1092(f)), Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

Violence Against Women Reauthorization Act of 2013, (Pub. Law 113-4)

KRS 164.240, Degrees Granted by Trustees

KRS 510.010 - 510.140, Sexual Offenses

Administrative Regulation 6:7, Policy on Disclosure of Campus Security and Crime Statistics

## Revision History

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1/26/2009, 9/30/2014 (Interim), 12/3/2014, 6/19/2015 (addition of procedures)

For questions, contact: [Office of Legal Counsel](#)

**UNIVERSITY OF KENTUCKY PROCEDURES FOR ADDRESSING AND  
RESOLVING ALLEGATIONS OF SEXUAL VIOLENCE, STALKING, DOMESTIC VIOLENCE,  
AND DATING VIOLENCE**

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**I. INTRODUCTION**

These procedures are applicable to allegations, investigations, and adjudication of cases involving *Administrative Regulation (AR) 6:2, Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence*.

These procedures apply in all cases involving violations of AR 6.2 regardless of whether the Respondent is a faculty member, staff employee, or a student. Although a violation of AR 6:2 is a violation of the Student Code, the Student Code explicitly provides that these procedures—not the Code’s procedures—apply when a student is accused of violations AR 6:2. Moreover, for staff employees, these procedures—not the Human Resources Policies and Procedures—apply when a staff member is accused of violations of AR 6:2. Although there are procedures for the termination of faculty in Governing Regulation X, these procedures—not the termination procedures specified in Governing Regulation X—apply for the investigation and initial determination of a faculty member’s responsibility for a violation of AR 6:2. If a faculty member is found responsible for a violation of AR 6:2, the Provost may then initiate termination procedures under Governing Regulation X.

**II. DEFINITIONS**

Definitions for these procedures are the same as the definitions in AR 6:2.

**III. INITIATING A COMPLAINT AND INVESTIGATION PROCESS**

A. *Filing a Complaint:* All complaints related to alleged violations of AR 6:2, regardless of where the complaint is initially received, must be referred to the Title IX Coordinator, or their designee, for investigation.

- B. *Confidential Reporting*: Individuals may make a confidential complaint or report (where individuals receiving the complaint are not required to report incidents to the Title IX Coordinator) to the University Violence Intervention and Prevention Center (VIP Center), the University Counseling Center, or University Health Services (students only). Anonymous reports may be made to the UKPD; however, because police reports are public records under state law, UKPD cannot hold reports of sexual assault, stalking, dating violence, or domestic violence in confidence. In addition, certain individuals designated as Campus Security Authorities under AR 6:7 are required by law to report sex offenses, stalking, and relationship violence to the University Police or Division of Crisis Management and Preparedness. These reports are made for statistical purposes, without the inclusion of identifying information of the parties. (see AR 6:7, Policy on Disclosure of Campus Security and Crime Statistics)
- C. *Dual Reporting*: A violation of AR 6:2 may be both a violation of University policy and law, and as such, the University encourages Complaining Witnesses to make reports to both local law enforcement agencies (Lexington Police Department, University of Kentucky Police Department, or other appropriate local law enforcement agencies) and a University official. The result of an external criminal investigation does not affect whether a violation of University policy has occurred. An external criminal investigation will not take the place of a University investigation, although a criminal investigation may supplement a University investigation. The University will not wait for the conclusion of a criminal investigation to begin conducting its own independent investigation, take interim measures to protect the University or any member of the University community, or when necessary, initiate hearing procedures as outlined below.
- D. *Investigation*: Upon receipt of a complaint, an Equal Opportunity Investigator will conduct an investigation to determine if there is probable cause to believe the Respondent committed a violation of AR 6:2 and, if so, which violation(s) occurred.
- E. *Final Report*. An Equal Opportunity Investigator will prepare a written Final Report. The Equal Opportunity Investigator will provide a copy of the Final Report to both the Respondent and the Complaining Witness.

#### **IV. INTERIM REMEDIES DURING THE INVESTIGATIVE PROCESS**

##### **A. Interim Suspension**

1. In certain circumstances, the Title IX Coordinator may impose an interim suspension from University premises upon receiving a complaint and before the completion of the investigation or the disciplinary process. Upon taking such action, the Title IX Coordinator or authorized representative will immediately notify the individual in writing of, and the reasons for, the interim suspension. Interim suspension may be imposed to:
  - (a) Ensure the safety and wellbeing of members of the University community or preservation of University property;
  - (b) Ensure the student's own physical or emotional safety and wellbeing; or
  - (c) Ensure that normal operations of the University are not disrupted.
2. The individual may appeal the interim suspension to the Provost (faculty members), or Associate Provost for Student and Academic Life (students), or Vice President for Human Resources (staff) in writing within seven (7) calendar days of the notice of the interim suspension. Interim suspension remains in effect during the appeal.
3. The Provost, Associate Provost for Student and Academic Life, or Vice President for Human Resources may reverse or modify the suspension. The decision of the Provost, Associate

Provost for Student and Academic Life, or Vice President for Human Resources regarding the interim suspension is final.

**B. Other Interim Remedies Available**

Interim remedies that may be initiated at the beginning of the complaint process and are not dependent on the outcome of the case include, but are not limited to:

1. Referral to on- or off-campus resources, such as the VIP Center or counseling;
2. Alteration of the housing (students), or workplace or workstation (employees) situation for the Complaining Witness or Respondent;
3. Removing a student from residential facilities or removing an employee from the work setting or University premises (See Interim Restriction or Suspension);
4. Limitation on contact between parties (e.g. no-contact orders, no-trespass orders);
5. Referral to academic support services, such as tutoring and testing accommodations (students);
6. Adjustments to course schedules and academic deadlines (students) or work schedules (employees); or
7. Other appropriate remedies based on each individual situation.

Interim remedies listed above in B.1-7 are not subject to appeal.

**V. DETERMINATION OF PROBABLE CAUSE**

- A. *Rebuttal/Supplementation to the Final Report.* Within three (3) calendar days of receiving the Final Report, the Complaining Witness and/or the Respondent may submit a written Rebuttal or Supplementation to the Report to the Title IX Coordinator.
- B. After reviewing the Final Report and any Rebuttal or Supplementation, the Title IX Coordinator will determine whether there is probable cause to believe the Respondent committed a violation of AR 6:2 and, if so, which violation(s) occurred.
- C. If the Title IX Coordinator concludes there is not probable cause to believe a violation of AR 6:2 occurred, the Title IX Coordinator will state this conclusion in writing and notify both the Complaining Witness and the Respondent. The matter will then be closed.
- D. Alternatively, if the Title IX Coordinator concludes there is probable cause, then the Title IX Coordinator will prepare a written statement of charges and present this written statement of charges to both the Complaining Witness and the Respondent. The notice will include a summary of the complaint, the alleged policy violation(s), the date and time of the pre-hearing meeting, and, if applicable, interim restrictions or remedies.

**VI. NOTICE OF HEARING AND ADMINISTRATIVE MEASURES**

- A. For allegations involving individuals, Notices will be sent to the Respondent's and Complaining Witness' official University email address no less than five (5) calendar days prior to a scheduled pre-hearing meeting. Failure to read and comply with the notice is not suitable grounds for an appeal.
- B. For registered student organizations, the Notice will be mailed to the organization's representative, typically the organization's president, on file with the University.

- C. The Title IX Coordinator schedules meetings and hearings. In scheduling a pre-hearing meeting or hearing, the Title IX Coordinator considers the availability of the Respondent, Complaining Witness, their respective attorneys, and the University Counsel.
- D. *Pre-Hearing Meetings*: The Title IX Coordinator or their designee will meet with the Respondent, the Complaining Witness, and the University Counsel to: (1) review the investigative report; (2) discuss the hearing process; and (3) attempt to resolve the matter without conducting a hearing. These meetings will occur separately. With the exception of support persons, pre-hearing meetings are closed meetings. If the Respondent chooses to resolve the allegation during the meeting, the case is closed and the appropriate unit administrator(s) will be notified. If the allegation is not resolved during the meeting, the case will be referred to the Hearing Officer for formal resolution by a Hearing Panel.

## VII. MEDIATION

If the Title IX Coordinator concludes there is probable cause, the Title IX Coordinator may choose to pursue mediation with the voluntary agreement of both the Complaining Witness and the Respondent. Complaints of sexual misconduct that are classified as Sexual Assault: Rape, Sexual Assault: Statutory Rape, or Sexual Assault: Incest are not appropriate for mediation. Any Mediation Agreement must have the approval of the Complaining Witness. Under no circumstances will a Mediation Agreement involve the payment of money from the University to the Respondent or from the Respondent to the Complaining Witness.

## VIII. FORMAL HEARING PROCEDURES

- A. *Sexual Misconduct Hearing Panel*: Once a case is referred to the Hearing Officer for a formal hearing, the Hearing Officer randomly selects three (3) members from the Sexual Misconduct Hearing Panel Pool. 12
- B. *Conflicts of Interest*: Any member of the Sexual Misconduct Hearing Panel who has a conflict of interest shall immediately recuse themselves. Conflict of interest includes, but is not limited to, personal knowledge of the facts and circumstances of the allegations or having a family, personal, faculty/student, or professional relationship with either the Complaining Witness or the Respondent.
- C. *Challenge to Sexual Misconduct Hearing Panel Members*. The Complaining Witness or the Respondent or the University Counsel may challenge any Sexual Misconduct Hearing Member for Cause if there is a belief that a member of the Sexual Misconduct Hearing Panel cannot render a fair and impartial result. Challenges to any Sexual Misconduct Hearing Panel Member must be made no later than seven (7) calendar days prior to the hearing. The Hearing Officer shall determine if Cause exists and will excuse any Panel Member where Cause exists. Under no circumstance will a Sexual Misconduct Hearing Panel be excluded for a reason that would violate the University's Non-Discrimination policy.
- D. *Selection of Additional Members*. If a Sexual Misconduct Hearing Panel member recuses themselves or if the Hearing Officer excuses a Panel member for Cause, then the Hearing Officer will randomly select additional members the Sexual Misconduct Hearing Panel Pool.
- E. *Access to Evidence*: Both the Respondent and the University Counsel will have access to all exculpatory and inculpatory evidence. Such access to evidence does not include review of the notes of the Equal Opportunity Investigator, the notes of the Title IX Coordinator, recordings of investigatory meetings, or information obtained that is not relevant to the charged allegations. Such access to evidence will be given at least fourteen (14) calendar days before the formal hearing.

F. *Hearings*: Formal hearings will be conducted by the Hearing Officer according to the following procedures:

1. Given the nature of these incidents, and the impact on the overall University community, the University, through the University Counsel, has the burden of proving that the Respondent has violated University policy. The Respondent is presumed innocent. While the Complaining Witness is an integral part of the process and the proof of the University's case, it is the responsibility of the University—through the University Counsel—to prove by a preponderance of the evidence that the Respondent violated University policy.
2. The University Counsel and the Respondent must submit to the Hearing Officer any information they wish to present at the hearing, the name(s) of their attorneys and support person(s), a preliminary list of questions, and a possible list of witnesses seven (7) calendar days before to the hearing. Absent good cause, as determined by the Hearing Officer, the parties may not submit information for the hearing after this deadline. Upon the receipt of information from both parties, the Hearing Officer will review the information submitted to eliminate any redundant, irrelevant, or prejudicial information.
3. A Respondent, the University Counsel, the Complaining Witness, or the University may request to postpone the hearing for good cause. The Respondent, the University Counsel, or the Complaining Witness must submit to the Hearing Officer a written request for postponement, including the reason(s) for the request, no later than seven (7) calendar days prior to the scheduled hearing unless an unforeseen circumstance occurs. The Hearing Officer may accept or deny the request, after considering the nature of the request and the incident at issue.
4. The Title IX Coordinator or their designee will arrange the attendance of witnesses who are members of the University community, if reasonably possible. The involved parties are responsible for arranging the attendance of witnesses who are not members of the University community.
5. The Title IX Coordinator or their designee, in consultation with the Hearing Officer, will create the formal hearing file. Copies of the formal hearing file will be made available to all parties and the Hearing Panel members at least five (5) calendar days prior to the hearing. The formal hearing file for the parties will contain the Title IX investigator's report, any rebuttal submitted by the Respondent, any supplemental report, the Title IX Coordinator's probably cause determination, list of witnesses, preliminary questions submitted by parties, and any other related information. The formal hearing file for the Hearing Panel members will include information about the parties, a list of possible witnesses, the charged policy violations, the date and location of the charged violation, and any other related information.
6. Both the Respondent and the University Counsel have the right to call relevant and necessary witnesses and to present evidence. Witnesses participate in a hearing to provide information to and answer questions from the Hearing Panel regarding the personal knowledge they have of the incident at issue. The members of a Hearing Panel may ask questions of the parties and all witnesses. The Respondent, the Respondent's attorney (if any), and the University Counsel will also be given an opportunity to examine and cross-examine witnesses who testify at the hearing, but the Respondent or the Respondent's attorney may not cross-examine the Complaining Witness and the University Counsel may not cross-examine the Respondent. Instead, they may submit questions to the Hearing Officer to ask on their behalf. The Hearing Officer will screen the questions submitted, and only ask those questions deemed appropriate and relevant to the case.
7. Unless the Respondent, the Complaining Witness, and the University Counsel stipulate, no portion of the Investigative Report, the Rebuttal, and any Supplementation is admissible. The Hearing Panel will not see the Investigative Report, the Rebuttal, or any Supplementation.



8. Witnesses other than the Complaining Witness and the Respondent will be excluded from hearings, except for the period of their own testimony.
9. The Complaining Witness and the Respondent have the right to be assisted by up to two (2) support person(s), including attorneys, of their choice and at their own expense. Attorneys who are representing a party to a formal hearing may fully participate in the hearing. Non-attorney support person(s) may communicate privately with the person they support during the hearing, but are not permitted to participate directly in any hearing.
10. The hearing will be closed to the public. The Complaining Witness, Respondent, their respective attorney(s) or support person(s), if any, their respective support person(s), if any, and the University Counsel are allowed to attend the entire portion of the hearing, excluding deliberations.
11. The Hearing Officer is responsible for maintaining order and determining the sequence of events during a hearing. The Hearing Officer may direct any person who fails to comply with procedures during the hearing, disrupts, or obstructs the hearing to leave the hearing. All questions of law, whether substantive, evidentiary, or procedural, will be addressed to and ruled upon by the Hearing Officer.
12. If a Respondent fails to appear before the Hearing Panel without good cause, the University Counsel will present evidence regarding the allegation and the Hearing Panel will make a determination of responsibility in the Respondent's absence.
13. The Complaining Witness, Respondent, or a witness may request reasonable accommodations to address concerns for the personal safety or comfort that may include providing separate facilities, using a visual screen, or by permitting participation by telephone, videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other appropriate means. The Hearing Officer, in consultation with the Title IX Coordinator, or their designee, will determine what accommodations, if any, are provided. However, no accommodation may violate the due process rights of the Respondent.
14. At the conclusion of the Hearing, the Hearing Officer will instruct the Panel on the Preponderance of the Evidence standard and any other matters that the Hearing Officer deems necessary to the Panel's determination.
15. After the Hearing Panel has reviewed the evidence presented at the hearing, the Panel will determine whether the Respondent has violated any section of AR 6:2. The Hearing Panel's determination will be made based on the Preponderance of the Evidence standard.
16. If the Hearing Panel determines that the Respondent is responsible for the violation, the finding must be unanimous. If any member of the Hearing Panel believes there is not a preponderance of the evidence for responsibility, then the Respondent must be found not responsible.
17. When a Hearing Panel determines the Respondent is responsible for a violation of AR 6:2, the Panel will immediately convene a supplemental proceeding to determine a recommended sanction(s). During the supplemental proceeding, the Respondent, University Counsel, and the Complaining Witness may submit relevant evidence or make relevant statements regarding the appropriateness of a specific sanction. The past disciplinary record of the Respondent will only be supplied to the Hearing Panel during the supplemental proceeding to consider sanctions.
18. After the hearing, the Hearing Panel will prepare a written summary of its findings of fact, conclusions of law, determination of responsibility, recommended sanctions (if any), and an explanation of the rationale for the decision. The report must be submitted to the Complaining Witness, the Respondent, the University Counsel, the Title IX Coordinator, the Associate Provost for Student and Academic Life (for students), the Provost (for faculty), or the Vice President for

Human Resources (for staff) within ten (10) calendar days following a hearing, unless circumstances exist that would delay issuance of the written outcome.

19. The sanctions will be ultimately determined and imposed by the Associate Provost for Student and Academic (for students), the Provost (for faculty), or the Vice President for Human Resources (for staff). The Associate Provost for Student and Academic Life (for students), the Provost (for faculty), or the Vice President for Human Resources (for staff) are not limited to sanctions recommended by the Hearing Panel. However, if the Associate Provost for Student and Academic Life (for students), the Provost (for faculty), or the Vice President for Human Resources (for staff) rejects or modifies the Hearing Panel’s recommendation or the decision of the Sexual Misconduct Appeals Board’s modification of the recommendation, a written explanation must be provided to the Complaining Witness, the Respondent, the University Counsel, and the Title IX Coordinator.

20. All hearings, with the exception of the deliberations, will be recorded. The recording is the property of the University.

## IX. RECOMMENDED SANCTIONS

The chart below outlines the recommended sanctions for specific violations of AR 6:2. Additional sanctions not specifically listed below may also be imposed when appropriate.

	<b>Recommended Range of Sanctions (STUDENTS)</b>	<b>Recommended Range of Sanctions (EMPLOYEES)</b>
<b>Sexual Assault</b>	Suspension, Dismissal, Revocation of Admission and/or Degree	Suspension, Termination
<b>Dating Violence or Domestic Violence</b>	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Revocation of Admission and/or Degree	Probation, Counseling Assessment, Suspension, Termination
<b>Stalking</b>	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Revocation of Admission and/or Degree	Probation, Written Warning, Counseling Assessment, Suspension, Termination
<b>Sexual Exploitation</b>	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Revocation of Admission and/or Degree	Probation, Written Warning, Counseling Assessment, Suspension, Termination

## X. APPEALS TO THE UNIVERSITY SEXUAL MISCONDUCT APPEALS BOARD (SMAB)

A. *Jurisdiction*: The SMAB has appellate jurisdiction over appeals related to violations of AR 6:2. Because the Student Code explicitly provides that these procedures—not the Code’s procedures—apply when a student is accused of violations of AR 6:2, the Sexual Misconduct Appeals Board (SMAB), not the University Appeals Board, will hear appeals of students who have been found responsible for violations of AR 6:2.

B. *Grounds for Appeal by Respondent*: A Respondent may appeal the Hearing Panel decision and/or sanction to the SMAB on any legal or factual ground including an allegation that the Respondent was denied due process. Neither the University nor the Complaining Witness may appeal a finding of not responsible.

C. *Composition of SMAB*: The Chair of the SMAB and two (2) members of the SMAB randomly chosen

by the Chair will consider the appeal. The appeal does not include a new hearing, but rather it is a review of the original hearing. (See Section F below)

- D. *Conflicts of Interest:* Any member of the Sexual Misconduct Appeals Board who has a conflict of interest shall immediately recuse himself/herself. Conflict of interest includes, but is not limited to, personal knowledge of the facts and circumstances of the allegations or having a family, personal, faculty/student, or professional relationship with either the Complaining Witness or the Respondent. If the Chair of the Sexual Misconduct Appeals Board recuses himself/herself, then the President will appoint a new Chair.
- E. *Challenge to Sexual Misconduct Appeals Board Members.* The Respondent or the University Counsel may challenge any Sexual Misconduct Appeals Board member if there is a belief that a member of the Sexual Misconduct Appeals Board cannot render a fair and impartial result. The Chair of the Sexual misconduct Appeals Board will determine if Cause exists and will excuse any Panel Member where Cause exists. Under no circumstance will a Sexual Misconduct Appeals Board Member be excluded for a reason that would violate the University's Non-Discrimination policy. If the Respondent or the University Counsel challenges the Chair of the Sexual Misconduct Appeals Board for Cause, the President will determine if Cause exists.
- F. *Appeal Procedures:* The following procedures apply to all appeals:
1. An appeal is initiated by filing a Notice of Appeal with the Chair of the SMAB within fourteen (14) calendar days of the date of the written decision rendered by the Hearing Panel. Upon a showing of good cause, the Chair of the SMAB may extend this time for filing a Notice of Appeal.
  2. Within fourteen (14) calendar days of filing the Notice of Appeal, the Respondent must file the Opening Brief, not to exceed twenty-five pages (25) double-spaced, to the Chair of the SMAB. A Respondent, their attorneys, and their support individuals have the right to review the hearing file, including any recording of the hearing, in preparation for filing an Opening Brief. Upon a showing of good cause, the Chair of the SMAB may extend this time for filing the Opening Brief.
  3. Within fourteen (14) calendar days of the filing of the Opening Brief, the University Counsel must file a Response Brief, not to exceed twenty-five pages double-spaced, to the Chair of the SMAB. The University Counsel has the right to review the hearing file, including any recording of the hearing, in preparation for filing a Response Brief. Upon a showing of good cause, the Chair of the SMAB may extend this time for filing the Response Brief.
  4. Within seven (7) calendar days of the filing of the Response Brief, the Respondent may file a Reply Brief, not to exceed ten (10) pages double-spaced, to the Chair of the SMAB.
- G. *Appellate Review:* On appeal, the SMAB will resolve the following issues:
1. Whether the factual findings were clearly erroneous.
  2. Whether the legal conclusions—including the conclusion that the hearing conformed to due process—are correct. Review of legal conclusions is *de novo*.
  3. Whether the recommended sanction(s) imposed was appropriate for the violation for which the Respondent was found responsible.
- H. *Appeal Record:* In considering an appeal, the SMAB will conduct a review of the entire record, including but not limited to:
1. The hearing file that is given to the parties prior to the hearing;
  2. Any pre-hearing rulings from the Hearing Officer;

3. The written recommendations of the Hearing Panel;
  4. The recording or transcript of the formal hearing;
  5. Any other materials admitted into evidence by the Hearing Panel; and
  6. The Opening, Response, and Reply Briefs.
- G. *SMAB Decision*: Upon review of all of the information, the SMAB has the authority to do one of the following:
1. Uphold the findings and recommendations made by the Hearing Panel;
  2. Modify the recommended sanction; however, the SMAB may not increase a penalty; or
  3. Remand the case back to a Hearing Panel for a new Hearing.
- H. *SMAB Decision*: The SMAB Chair will communicate the outcome in writing to the involved parties and the Title IX Coordinator.
1. For students, the decision of the SMAB is final and binding upon all involved.
  2. For employees, the decision of the SMAB may be appealed pursuant to applicable law (KRS 164.230) and/or University regulations *GR I.F* and *GR X.B.1.f* (faculty).

## **XI. Amendment of These Procedures**

In order to have the flexibility to amend the procedures as necessary to correspond to changes in the law, court decisions, or regulatory guidance, the President, in consultation with the General Counsel, may amend these procedures as necessary. The President must report any material amendments to the Board of Trustees.